

FEB 14 1991

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In The
Supreme Court of the United States

October Term, 1990

CENVILL INVESTORS, INC., a Florida corporation,
f/k/a CENTURY VILLAGE EAST, INC.;
COMMUNICATIONS & CABLE INC., a Florida
corporation; C.V.R.F. DEERFIELD, LTD., a Florida
limited partnership, by and through its general
partner, HOLROD REALTY HOLDING COMPANY, a
New York corporation; and D.R.F., INC., a
Delaware corporation,

Petitioners,

v.

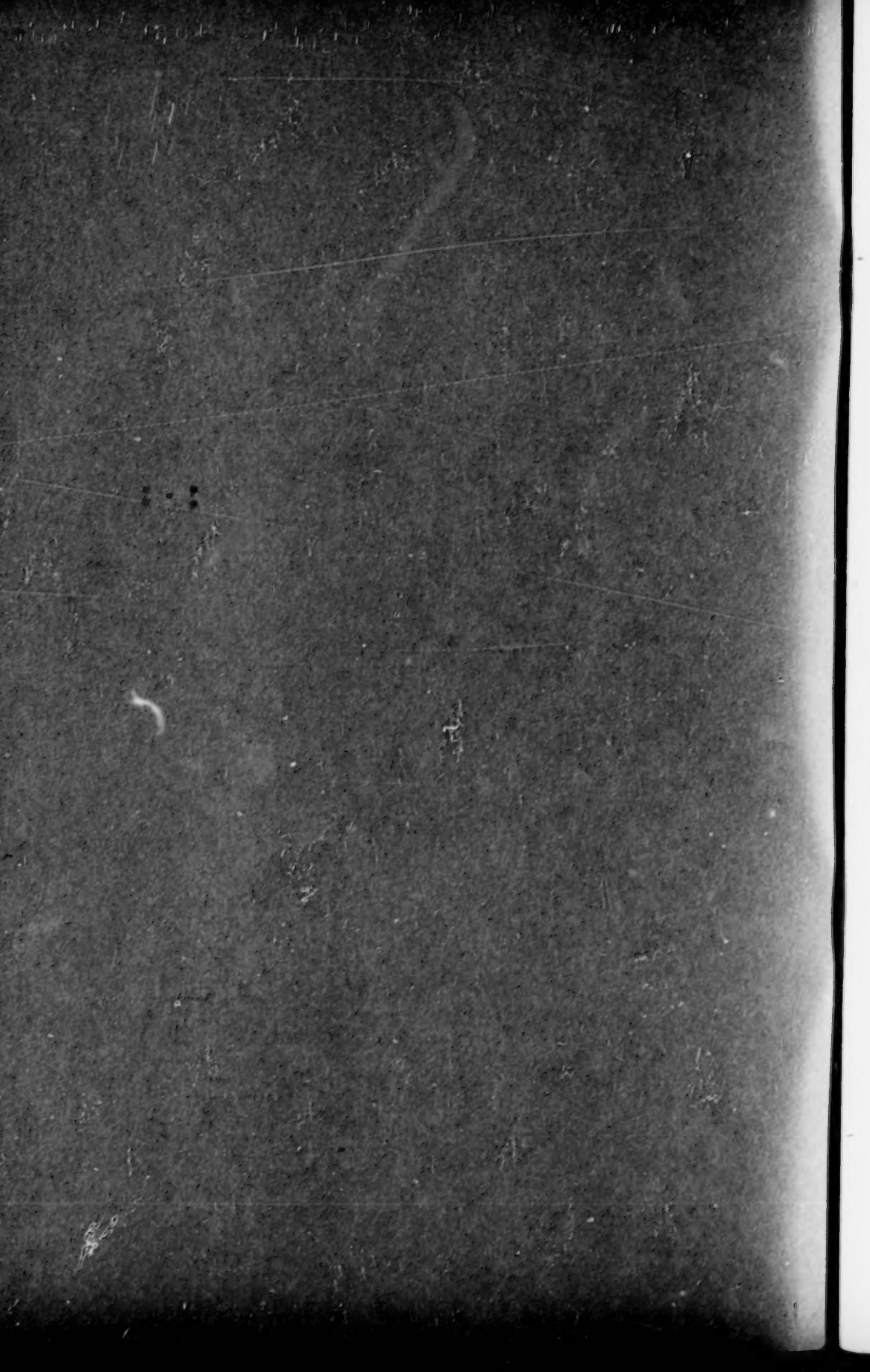
CONDOMINIUM OWNERS ORGANIZATION OF
CENTURY VILLAGE EAST, INC., a Florida not-for-
profit corporation; ASHBY "A" CONDOMINIUM
ASSOCIATION, INC., a Florida not-for-profit
corporation; and AMADEO TRINCHITELLA,

Respondents.

Petition For Writ Of Certiorari To The
District Court Of Appeal Of The
State Of Florida, Fourth District

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

*1. Is a state statute, which deprives a person of property based upon unverified allegations without a hearing related to the merits of the claim, unconstitutional on its face as a violation of the due process clause of the Fourteenth Amendment?

*2. Is a state statute, which allows a condominium unit owner or a condominium association to pay rent into a court registry if the unit owner or the association initiates any action against the lessor, unconstitutional as applied where the lessor was not permitted to present any evidence on the merits of the claim and in the absence of any claim of a property interest in the escrowed funds by the unit owners or the association?

* Petitioners' statement of their issue is not fairly raised by the evidence or the decision of the courts below.

LIST OF PARTIES

Petitioners' description of the parties below is, to the best of Respondents' knowledge, essentially correct. In addition, subsequent to the initiation of this interlocutory appeal, the following 253 condominium associations within the subject condominium community were added as Plaintiffs in this action. The 8,508 unit owner members of these condominium associations are also members of Respondent, COOCVE.

ASHBY "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ASHBY "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ASHBY "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, BERKSHIRE "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, BERKSHIRE "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, BERKSHIRE "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, BERKSHIRE "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, BERKSHIRE "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit

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corporation, CAMBRIDGE "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, CAMBRIDGE "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "P" CONDOMINIUM ASSOCIATION, INC., a Florida not-

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for-profit corporation, DURHAM "Q" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "R" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "S" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "T" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "U" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "V" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "W" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "X" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, DURHAM "Y" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ELLESMERE "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ELLESMERE "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ELLESMERE "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ELLESMERE "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ELLESMERE "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "D" CONDOMINIUM

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ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "P" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, FARNHAM "Q" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, GRANTHAM "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, GRANTHAM "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, GRANTHAM "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, GRANTHAM "D" CONDOMINIUM ASSOCIATION, INC., a Florida

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not-for-profit corporation, GRANTHAM "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, GRANTHAM "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, HARWOOD "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ISLEWOOD "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ISLEWOOD "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ISLEWOOD "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, ISLEWOOD "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, KESWICK "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation,

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KESWICK "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, KESWICK "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, LYNDHURST "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM

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"B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "P" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "Q" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "R" CONDOMINIUM ASSOCIATION, INC., a Florida

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not-for-profit corporation, MARKHAM "S" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, MARKHAM "T" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, NEWPORT "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit

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ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, PRESCOTT "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, RICHMOND "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, SWANSEA "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, SWANSEA "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-

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profit corporation, TILFORD "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "P" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "Q" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "R" CONDOMINIUM ASSOCIATION, INC., a Florida not-

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for-profit corporation, TILFORD "S" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "T" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "U" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "V" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "W" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, TILFORD "X" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER

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"L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, UPMINSTER "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "M" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "N" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "O" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "P" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit

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corporation, VENTNOR "Q" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "R" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, VENTNOR "S" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "B" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "C" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "D" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "E" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "F" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "G" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "H" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "I" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "J" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "K" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, WESTBURY "L" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation.

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No. 90-935

In The
Supreme Court of the United States
October Term, 1990

CENVILL INVESTORS, INC., a Florida corporation,
f/k/a CENTURY VILLAGE EAST, INC.;
COMMUNICATIONS & CABLE INC., a Florida
corporation; C.V.R.F. DEERFIELD, LTD, a Florida
limited partnership, by and through its general
partner, HOLROD REALTY HOLDING COMPANY, a
New York corporation; and D.R.F., INC., a
Delaware corporation,

Petitioners,

v.

CONDOMINIUM OWNERS ORGANIZATION OF
CENTURY VILLAGE EAST, INC., a Florida not-for-
profit corporation; ASHBY "A" CONDOMINIUM
ASSOCIATION, INC., a Florida not-for-profit
corporation; and AMADEO TRINCHITELLA,

Respondents.

Petition For Writ Of Certiorari To The
District Court Of Appeal Of The
State Of Florida, Fourth District

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondents, CONDOMINIUM OWNERS ORGANIZATION OF CENTURY VILLAGE EAST, INC. ("COOCVE"), a Florida not-for-profit corporation; ASHBY "A" CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation ("Condominium Association"); and AMADEO TRINCHITELLA ("Unit Owner") urge this Court to deny the Petition for Writ of Certiorari to review the judgment and opinion of the District Court of Appeal of the State of Florida, Fourth District, entered in this proceeding on February 14, 1990, upon which the Florida Supreme Court declined discretionary review on September 14, 1990.

OPINIONS BELOW

The Opinion of the District Court of Appeal of the State of Florida, Fourth District, is reported at 556 So.2d 1197 (Fla. 4th DCA 1990), and is reprinted in the Appendix of the *Petition* at page 1a. The trial court's interlocutory order, upon which appeal is premised, is reprinted in the Appendix hereto at p. 5A.

JURISDICTION

The Court's jurisdiction has been invoked by Petitioners pursuant to 28 U.S.C. § 1257(a) (1990).

**CONSTITUTIONAL PROVISIONS, STATUTES,
AND RULES INVOLVED**

- A. U.S. CONST. amend. XIV, § 1:
[Reprinted in Petitioners' Appendix at 3]
- B. U.S. CONST. art. I, § 10:
[Reprinted in Petitioners' Appendix at 3]
- C. 28 U.S.C. § 1257. State courts; certiorari:
[Reprinted in Petitioners' Appendix at 3]
- D. Fla. Stat., § 718.401 (1987). Leaseholds. –
[Reprinted in Petitioners' Appendix at 3]
- E. Fla. Rules of Civ. Pro.

(1) RULE 1.100 PLEADINGS AND MOTIONS

(b) **Motions.** An application to the court for an order shall be by motion which shall be made in writing unless made during a hearing or trial, shall state with particularity the grounds therefore and shall set forth the relief or order sought. The requirements of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

**(2) RULE 1.130 ATTACHING COPY OF
CAUSE OF ACTION AND EXHIBITS**

(a) **Instruments Attached.** All . . . contracts, . . . or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading. . . .

(b) **Part for all Purposes.** Any exhibit attached to a pleading shall be considered a party thereof for all purposes. . . .

(3) **RULE 1.160 MOTIONS**

All motions and applications in the clerk's office for the issuance of mesne process and final process to enforce and execute judgments, for entering defaults, and for such other proceedings in the clerk's office as do not require an order of court shall be deemed motions and applications grantable as of course by the clerk. The clerk's action may be suspended or altered or rescinded by the court upon cause shown.

STATEMENT OF THE CASE

Proceedings Before the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

Respondents initiated the litigation involved in this interlocutory appeal by filing their original complaint in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida on April 20, 1988. This complaint was served upon Petitioners¹ Cenvill Investors, Inc.; Century Village East, Inc.; C.V.R.F. Deerfield Limited; Holrod Holding Company and D.R.F., Inc. on April 21 of 1988. Communications and Cable, Inc. was

¹ Petitioners are also referred to herein as "Defendants". Respondents are also referred to herein as "Plaintiffs", and Respondent Condominium Owners Organization of Century Village East, Inc., is also referred to individually as "COOCVE".

served May 5, 1988. The complaint was subsequently twice amended. The first amended complaint was served May 18, 1988, and the second amended complaint was served June 23, 1988. The complaints basically alleged default by the defendant-lessor under the leases (the "Recreation Leases") providing for the use of the recreational facilities to the Century Village East Condominium community in Broward County, Florida. This community is comprised of 254 condominiums. The condominiums are operated by 253 condominium associations. Each of the condominium associations, joined by the individual unit owners in their condominium, entered into a long term recreation lease.

On May 4, 1988, Plaintiffs moved, pursuant to § 718.401 (4)(a), Fla. Stat., for an order allowing placement of the rents under the recreation leases (the "Rent") into the registry of the court. Plaintiffs had attempted to place the Rent into the registry of the court without court order, but were advised by the clerk of the court that the policy of the court was not to accept such funds into the registry without a court order. The hearing on this Motion was originally scheduled for May 26, 1988, but was delayed until July by order of the court. Upon Defendants' Motion To Continue Hearing requesting additional time for preparation prior to the hearing. *See*, Appendix at p. 3A. The hearing on Plaintiffs' Motion was held July 26, 1988, with the Honorable George A. Shahood, a sitting judge of Florida's Seventeenth Judicial Circuit presiding, and a court reporter transcribing the proceedings. This transcription resulted in a 65 page transcript which forms a part of the record on appeal and excerpts of which are found in the Appendix hereto at p. 1A.

Plaintiffs and Defendants, through their respective counsel, presented oral arguments on the motion to allow placement of the rents in the court registry. The trial court also received into evidence, at the request of Defendants' counsel, the deposition Defendants had taken of Mr. A. Brass (Esquire), an officer and director of Plaintiff COOCVE. *See*, Appendix at p. 2A. During this hearing, Defendants never questioned the validity of the long term recreation leases or their amendments. Defendants did attempt to introduce evidence and argument that the defaults alleged by Plaintiffs in their complaint were either resolved or misstated. The court, however, declined to accept evidence on these ultimate issues in the litigation.

The trial court ruled at the hearing that "Operational Rent", the portion of the rent under the Long Term Leases comprised of a pass-through of the operational expenses for the leased recreational facility, could be retained in the registry of the court. The trial court declined to extend the order to the "Base Rent".² Under the long term recreation leases, as amended, the "Base Rent" comprises the lessor's profit. Defendants had argued, and the trial court agreed that this portion of the rent was not in dispute and it could not properly be retained in the registry under § 718.401(4)(a), Fla. Stat.

² Base Rent was ordered paid into the registry on a temporary basis because of Defendants' representations at the hearing before the trial court that the Operational and Base Rents were not paid by separate checks and could not be readily separated, but were to be automatically dispersed to Lessor.

On August 9, 1988, the trial court issued its order requiring placement of the Operational Rent into the registry of the court effective September 1, 1988. *See*, Appendix at p. 4A. Defendants' moved for reconsideration of this order and a hearing for reconsideration was held on this motion on August 26, 1988. On August 31, 1988, the court extended the effective date of its prior order to October 1, 1988 and reserved on the remainder of Defendants' Motion for Reconsideration. *See*, Appendix at p. 6A. On August 22, 1988, Defendants filed a "Motion to Establish Procedures for Disbursement of Funds." Finally, a notice of appeal of the original August 9, 1988 order was filed by Defendants on September 2, 1988.³

No monies were, however, placed in the registry of the court either on October 1, 1988, or thereafter. Following the issuance of the trial court's order, the parties had discussed alternatives to the placement of the rent in the registry of the court, and Plaintiffs believed that an agreement on this matter had been reached and would be memorialized in an agreed stipulation with the court. When the stipulation was not forthcoming but the ordered deadlines passed, Plaintiffs moved to compel the agreement or, in the alternative, have the rents placed in the registry of the court as required by the trial court's order. On November 9, 1988, shortly before Plaintiffs' motion was to be heard, a joint stipulation regarding

³ Florida law holds that, although the trial court may proceed with the matter in the absence of a stay, the trial court has no jurisdiction to change an appealed order during the pendency of the case because to do so would deny the efficacy of the appellate court's jurisdiction. *See, e.g., Bailey v. Bailey*, 392 So.2d 49 (Fla. 3d DCA 1981).

depository in lieu of court registry and joint stipulation regarding disbursements were filed, and the agreed orders thereon were entered by the trial court. These stipulations and agreed orders are reproduced in the Appendix at pp. 8A, 11A, 13A, and 17A.

The agreed orders provided that (i) the joint stipulations of the parties were adopted and (ii) the procedures outlined in the stipulations would be adhered to. The joint stipulations provided for the establishment of a recreation escrow account in an agreed bank to accept funds with disbursements from the account by order of the trial court. Regarding the rents, Defendants would continue to receive rent checks and perform normal accounting functions with regard to those checks. Defendants would then separate rent into accounts for Operational Rent and Base Rent, and distribute Base Rent directly to the Lessor, while placing Operational Rent into the "recreation escrow account". Also into this account were to be placed incomes received from functions conducted within the recreation area, which income is used to offset operational costs. The stipulations further provided for disbursements to be made from the recreational escrow account pursuant to orders agreed upon by the parties for the payment of the operational expenses of the leased premises. If the parties were unable to agree to the payment of particular items alleged by Defendants to be operational expenses, then the matter could be referred to a court-appointed master who would conduct evidentiary hearings and forward his recommendations on disbursement to the trial court. The trial court would then determine, based upon the recommendation and any objections presented, if disbursements were appropriate.

The parties continue to operate under the provisions of these stipulations, hearings before the master have occurred, and on a routine basis monies have, by agreed court order, been disbursed from the recreation escrow account for operation and maintenance of the leased recreational facilities. The underlying litigation has not yet come to trial and is currently ongoing.

Proceedings Before Florida's Fourth District Court of Appeal.

Defendants appealed the August 9, 1988 interlocutory order of the trial court, and Plaintiffs cross-appealed the portion of the trial court's order which allowed automatic disbursement to Defendants of the Base Rent. In their opinion on the appeal, Florida's Fourth District Court of Appeal initially noted a suggestion of mootness on the record, stating:

Before addressing the issues as presented by the parties, we pause to make reference to an aspect of the pleadings and certain actions of the parties that lend the suggestion of mootness to our inquiry. . . . [T]he parties by agreement have arrived at a mutually-satisfactory arrangement for payment and disbursement of rent during the pendency of the litigation, so that payment is not being made into the registry of the court. Even so, we do not choose to rest our disposition upon mootness since there remain issues constituting a case in controversy.

The appellate court then went on to uphold the trial court's order, except as to Plaintiff COOCVE, which it found was not an "association" within the meaning of Chapter 718, Florida Statutes, the Florida "Condominium

Act". The appellate court did note COOCVE's relationship to the 253 condominium associations as their designated agent and as umbrella organization for the Century Village East community, but found this not within the technical definition of an "association" under Florida's Condominium Act. *See, Appendix to the Petition at p. 1a.*

Proceedings Before The Florida Supreme Court.

Subsequent to the mandate issued on the opinion of the appellate court, Defendants petitioned for Writ of Certiorari to the Florida Supreme Court. That Court, however, declined to exercise its discretionary jurisdiction in this matter. That Court also denied Defendants' Motion To Strike, which asked that Plaintiffs' argument that the matter was moot be stricken. *See, Appendix to the Petition at p. 12A.*



WHY THE WRIT SHOULD BE DENIED

This matter is essentially moot as no monies whatsoever have been placed into the registry of the court. Assuming, however, that a valid case in controversy were before the Court, Petitioners' arguments are neither meritorious nor compelling, and this Court should decline to exercise its discretion in this matter.

I. STATE COURT PROPERLY SUSTAINED THE VALIDITY OF THE STATE STATUTE AGAINST AN ATTACK THAT THE STATUTE FACIALLY AND AS APPLIED VIOLATED THE DUE PROCESS CLAUSE.

Florida's statutory provision for the temporary placement of rent under long term condominium leases into the registry of the court during the pendency of litigation of disputes over the leases, does not violate due process either facially or as applied. The argument raised by Defendants that the subject statute denies due process to the holder of a long term lease on condominium facilities was carefully considered and rejected by the Florida appellate court. "We have carefully considered the parties argument . . . but conclude that the statute we are called upon to evaluate does not fit within the parameters of these due process concerns." *See, Appendix to Petition at 1a.*

As Defendants correctly observe, "[r]ent deposit statutes have been upheld by the federal courts in the face of similar claims." *Petition at p. 19, citing Chernin v. Welchhaus, 844 F.2d 322 (6th Cir. 1988) (statutory scheme permitting tenant to pay rent into court maintained escrow accounts when rental apartments are not being properly maintained did not violate due process); and Chicago Board of Realtors, Inc. v. City of Chicago, 819 F.2d 732 (7th Cir. 1987) (city ordinance provisions allowing a tenant broad discretion to withhold rent while retaining possession of leased property did not violate due process). See also, Pennell v. City of San Jose, 485 U.S. 1, 108 S. Ct. 849, 99 L.Ed 2d 1 (1988) (a city ordinance making landlord's right to raise rent above a specified annual percentage subject*

to objection by tenant and proof establishing reasonableness by the landlord comports with due process).

Defendants now ask this Court to find Florida's appellate court erred because it did not specifically delineate its application of the "three-prong" test of *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed 18 (1976), a case Defendants failed to cite to that court. The *Matthews* test, however, demonstrates Florida's statute is constitutional and provides all the process due. It is Defendants who have erred in their application of this test.

A. Defendants' Asserted Interest In The Property Is Minimal And Plaintiffs Have A Substantial Interest.

The first step of the *Matthews* test is to evaluate the interests involved. Under this analysis, contrary to Defendants' assertion of a substantial interest, the facts demonstrate Defendants have a minimal interest in the subject property. Plaintiffs, on the other hand, have a substantial interest in these funds which are collected for and required to be used only for maintenance and operation of their community recreational facilities.

The recreational facilities which are the subject of the instant long term leases, serve a community of 8,508 condominium units and 254 separate condominiums. Under Florida law, the use right to these recreational facilities under the long term leases, is a part of the condominium property of these condominiums.

"Condominium property" means the lands, leaseholds and personal property that are subject to condominium ownership, . . . and all

improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(11), Fla. Stat. The only rent subject to retention under the appealed order was that required to be used for the operational expenses of the leased recreational facilities. Failure to properly expend the Operational Rent to operate and maintain the leased facilities would result in the unit owners being deprived of their full use rights to these facilities which form the nucleus of their condominium community.

Defendants, however, will be deprived only of their alleged right to have the Operational Rent pass through their hands on the way to pay operational expenses. Defendants are not free to choose how to use such funds. Rather, the funds can be used for no other purpose than operating and maintaining the leased property. Operational Rent "is used to defray expenses such as maintenance, janitorial services and landscaping". *Petition* at 2a. Unlike the garnished wages in *Snidach v. Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820, 23 L.Ed 2d 349 (1969), Defendants herein have no independent "use right" to the funds to be placed in the court registry. If there are no operational expenses, there is no Operational Rent.

Even the right to make decisions on incurring operational expenditures was circumscribed by amendments to the long term leases:

The [Recreational] Committee [of COOCVE] shall have input into all matters affecting the operation and maintenance of the demised premises, including, but not limited to . . . cost

of operation of the demised premises . . . Commencing on January 1, 1985, *in the event of a disagreement between the Lessor and the Recreation Committee, the decision of the Recreation Committee shall prevail.* (Emphasis added.)

Exhibit A to the Second Amended Complaint. See, Appendix at p. 18A.

Under the facts of this case, it is clear the Lessors' interest in the Operational Rent is merely tangential. Defendants have no right to use these funds. They receive the funds to offset operating expenses of the leased premises and their decision on making "use" of the funds is circumscribed both by the specific purpose for which this rent is collected and the authority over it ceded, by amendment, to Plaintiff COOCVE under the Amendment. Defendants' asserted property right to "use" of the Operational Rent is therefore minimal.

B. The Statutory Procedure Allows A Meaningful And Timely Opportunity To Be Heard.

This is not a case where an order was issued *ex parte* or without the intervention of a judicial officer. The procedure in the instant case clearly demonstrates that Defendants received ample opportunity to present to a court of competent jurisdiction their objection to the placement of funds in the court registry. "[D]ue process is flexible and calls for such procedural protections as a particular situation demands." *Matthews v. Eldridge*, 424 U.S. at 334, 96 S. Ct. at 902 (citations omitted). "In only one case . . . has the Court required a full adversarial evidentiary hearing prior to adverse governmental action." *Cleveland Board of Education v. Loudermill*, 470 U.S.

532, 545, 105 S. Ct. 1487, 84 L.Ed 2d 494 (1985) (citations omitted). In general, "something less" than a full evidentiary hearing is sufficient prior to adverse action. *Matthews v. Eldridge*, 424 U.S. at 343, 96 S.Ct. at 900.

Defendants received notice and a hearing before a sitting judge. At this hearing, Defendants were represented by counsel who presented full argument on their position. It was not until this procedure had been completed that the trial court ordered monies into the court registry. Defendants' assertion, that "the trial court acted largely in the dark", is without foundation. The order issued by the court clearly reflects that the court had a clear understanding of the issues presented and, in fact, that Defendants had prevailed on their argument that the "Base Rent" should not be subject to retention in the court registry, a ruling upheld by the appellate court. Although Defendants also argued the Operational Rent should not be placed in the court registry, they were not denied due process because they did not prevail on this portion of their argument.

The observation of the court in *Koscow v. Condominium Association of Lakeside Village*, 512 So.2d 349, 351 (Fla. 4th DCA 1987), lends insight into another deficiency in Petitioners' argument that an *evidentiary* hearing was necessary prior to the trial court's issuance of an order requiring placement of funds in the court registry. The district court observed in *Koscow*: "Appellants argued that the trial court should have taken evidence . . . however, absent an ambiguity in the lease, there is nothing to construe and no reason to take evidence." See also, *Providence Square Association, Inc. v. Biancardi*, 507 So.2d 1366 (Fla. 1987) (writing itself must generally stand

as only exposition of parties' intent in actions at law based upon contract and other written documents). See also, Rule 1.130, Fla. R. Civ. Pro.

Moreover, the evidentiary hearings provided under the statute for release of deposited rent from the court registry are well designed to handle release of the Operational Rents. The only proper use of these funds is for necessary maintenance and operating expenses for the leased recreation facilities. Funds are, under the statute, to be released, *inter alia*, upon application to the court and a showing that the funds are necessary for the payment of maintenance and operating expenses of the leased facilities. See, § 718.401(4)(a), Fla. Stat. Defendants did not receive such a hearing because they never requested it. Indeed, no money was ever placed in the court registry.

By entering into joint stipulations placing the monies elsewhere and providing an agreed release procedure, Defendants foreclosed the possibility of requiring evidentiary hearings as provided for under the statutory provisions. The statutory hearing procedure for disbursements from the court registry was never pursued by Defendants so there is no record on how that procedure may have operated to protect the asserted interest of Defendants.

It appears the primary basis for Defendants' argument that they were denied due process is the failure of the trial court to entertain evidence on the various dates on which each of the leases were first entered. The only reason Defendants would attempt to demonstrate these dates is to support an argument that the statute was being applied "retroactively" to impair their leases. The dates were, however, found irrelevant as both the trial

court and the appellate court found that the statute worked no impairment of contract.

This holding is determinative of Florida law, and is consistent with the Federal precedents on the issue.⁴ "The Supreme Court has repeatedly affirmed that the [contract] clause does not abrogate a State's inherent power to protect the interest of its citizens." *Chicago Board of Realtors, Inc. v. City of Chicago*, 819 F.2d at 735-36. See also, *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470, 478, 107 S. Ct. 1232, 1251-53, 94 L.Ed 2d 472 (1987); *Energy Reserves Group v. Kansas Power & Light Co.*, 459 U.S. 400, 410, 103 S. Ct. 697, 703, 74 L.Ed 2d 569 (1983); *Allied Structural Steel Co. v. Spanaus*, 432 U.S. 234, 241, 98 S. Ct. 2716, 2720, 57 L.Ed 2d 727 (1978); *United States Trust Co. v. New Jersey*, 431 U.S. 1, 16, 97 S. Ct. 1505, 1514, 52 L.Ed 2d 92 (1977); *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398, 434, 54 S. Ct. 231, 238, 78 L.Ed 413 (1934); *Manigault v. Springs*, 199 U.S. 473, 480, 26 S. Ct. 127, 130, 50 L.Ed 274 (1905).

C. The State Has A Substantial Interest.

In applying the *Matthews* test to determine the result of its final prong, governmental interest, a court must consider two categories of governmental interest. Governmental interest is not limited to the "government's own fisc" (*Petition* at 18). Rather, the first interest is the government's interest in "the policy that the state action

⁴ For a discussion of the contract clause in the context of a rent deposit ordinance, see, *Chicago Board of Realtors, Inc. v. City of Chicago*, 819 F.2d at 735-37.

advances." See, *Chernin v. Welchus*, 844 F.2d at 329-30. See also, *Matthews v. Eldridge*, 424 U.S. at 335, 96 S. Ct. at 903. Only secondarily does the court consider the "government's interest in minimizing its administrative and fiscal burdens." *Chernin v. Welchus*, 844 F.2d at 329-30.

Both Florida and Federal courts have long recognized the State's interest in the landlord/tenant relationship in the residential housing market, finding this "directly related to the health and welfare of its citizens". See, *Chernin*, 844 F.2d at 329-30. The Supreme Court has "consistently affirmed that States have broad power to regulate housing conditions in general and the landlord/tenant relationship in particular." *Lorretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L.Ed 2d 868 (1982).

The instant statute involves not only the landlord/tenant relationship, but also the statutory condominium regime.

In Florida condominiums are creatures of statute and as such are subject to the control and regulation of the legislature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interest of the parties involved.

Century Village Inc. v. Wellington E, F, K, L, H, J, M & G Condominium Associations, 361 So.2d 128, 133 (Fla. 1978). Florida courts have found that the unique problems of condominium living necessitates greater control over and limitations upon rights than that which might be tolerated under the more traditional forms of property ownership. *Seagate Condominium Association, Inc. v. Duffy*, 330

So.2d 484 (Fla. 4th DCA 1976). Inherent in Florida's condominium concept is the principle that a certain degree of freedom, that might exist in other forms of ownership, may be legislatively constrained. *Hidden Harbour Estates, Inc. v. Norman*, 309 So.2d 180, 182 (Fla. 4th DCA 1975).

In § 718.401 of the Florida Condominium Act, the Florida State legislature has established a scheme for depositing rents into the court's registry during the pendency of litigation involving the obligations of condominium long-term leases. This statute is self-contained and relates solely to condominium long term leases, a form found subject to abuse by both the State and Federal legislatures.

The Congress, in enacting the Condominium and Cooperative Abuse Relief Act of 1980 (the "Federal Condominium Act"), 15 U.S.C. § 3601, *et seq.*, made the following findings:

[C]ertain long-term leasing arrangements for recreation and other condominium or cooperative-related facilities which have been used in the formation of cooperative and condominium projects may be unconscionable; in certain situations State governments are unable to provide appropriate relief; *as a result of these leases economic and social hardships may have been imposed upon cooperative and condominium owners, which may threaten the continued use and acceptability of these forms of ownership* and interfere with the interstate sale of cooperatives and condominiums; appropriate relief from these abuses requires Federal action.

(Emphasis added.) See, S. Rep. No. 736, 76th Cong., 2d Sess. 51-52, reprinted in 1980 U.S. Code Cong. & Ad News 3506, 3558-59.

Similarly, the Florida legislature in the Preamble to the 1988 Amendment to § 718.401, Fla. Stat., stated *inter alia*:

The State of Florida has made efforts to eliminate unscrupulous real estate and securities operations which, in the past resulted in Florida's gaining a poor reputation for protecting consumers. *Comprehensive laws have been adopted and scrupulously enforced in areas of . . . condominiums. . . . It is in the public's interest and welfare that the State maintain its image of protecting Florida purchasers and dealing harshly with those who would take advantage of them.*

Chapter 88-225, Fla. Laws 1988, Preamble (emphasis added).

As Defendants indicate, there are 8,508 individual unit owners served by these recreational facilities. The community is, in effect, a small town with these shared recreational facilities as its nucleus. The adequate maintenance and repair of these facilities in this quasi-municipal setting is of considerable concern to the State, particularly in circumstances where the legislature has determined:

[T]he State of Florida has an exceptionally large population of elderly and retired citizens, a large number of whom reside in condominiums and cooperatives and an overwhelming number of whom are living on a fixed income . . . for a growing portion of Florida's population, quite possibly a majority, the high cost of such basic necessities is denying them such basic necessities as sufficient nutrition intake, safe and healthy housing accommodations, clothing and adequate preventative and curative health services.

Chapter 88-225, Fla. Laws 1988, Preamble [to Amendment of § 718.401, Fla. Stat.].

The Florida legislature clearly has a strong interest in protecting the health and welfare of its citizens, the reputation of its condominiums, and the adequacy of its housing, including the amenities serving condominium housing. The subject statute, by providing a mechanism to insure that rent paid under recreation leases by unit owners, many of whom are elderly and on fixed incomes, is properly used to operate and maintain leased recreational facilities, furthers this goal.

II. NO IMPORTANT UNRESOLVED ISSUES ARE RAISED AND THE STATUTE WAS NOT DESIGNED TO DEPRIVE A PERSON OF PROPERTY WITHOUT DUE PROCESS.

A. Defendants Raise No Due Process Concerns.

Defendants received notice and an opportunity to be heard before a sitting judge at a hearing where they were represented by counsel prior to the issuance of the appealed order. The order appealed was never acted upon but was superseded by the agreed stipulation and entry of the agreed orders. *See*, Appendix at pp. 8A, 11A, 13A, and 17A. As no rent was placed in the court registry the post trial procedure was never utilized by Defendants and Defendants clearly received sufficient process.

B. The Federal Issue Cannot Be Properly Addressed On This Record.

The review sought by Defendants is premature. This court has consistently declined to review constitutional claims which were not actually presented by the facts in

the particular case before the Court. *See, e.g., Hodell v. Indiana*, 452 U.S. 314, 355-36, 101 S. Ct. 2376, 69 L.Ed 2d 40 (1981) (dismissing as "premature" a due process challenge to the civil penalty provision of the Surface Mining Act because "appellees have made no showing that they were ever assessed civil penalties under the Act, much less that the statutory pre-payment requirement was ever applied to them or ever caused them injury"); *Pennell v. City of San Jose*, 485 U.S. at 1, 8-11, 102 S. Ct. at 2979 ("The mere fact that a hearing officer is enjoined to consider hardship to the tenant in fixing a landlord's rent, without any showing in a particular case as to the consequence of the injunction and the ultimate determination of the rent, does not present a sufficiently concrete factual setting"). *See also, Hodell v. Virginia Service Mining and Reclamation Association, Inc.*, 452 U.S. 264, 294-95, 101 S. Ct. 2352, 69 L.Ed 2d 1, 35 (1981) ("The constitutionality of statutes ought not to be decided except in an actual factual setting that makes such a decision necessary.").

Defendants concede that due process is met if "a party deprived of property is given a hearing." *See, Petition* at p. 10. Assuming, *arguendo*, that Defendants were deprived of property by the mere issuance of the trial court's order, clearly Defendants also received notice and a hearing prior to that issuance. One would conclude from Defendants' own argument that this appeal is therefore without foundation. Defendants, however, assert that the statute relied upon by the trial court violates due process because:

- (i) The statute does not provide for a pre-deprivation hearing or a hearing on the merits immediately after the seizure occurs;

- (ii) The statute allows the deprivation to occur by mere application to the court clerk without judicial supervision; and
- (iii) The only post-deprivation hearing authorized by the statute impermissibly shifts the burden to the lessor to demonstrate need or hardship before any funds are released from the Court Registry and impermissibly limits inquiry to need or hardship. [*Petition* at p. 11.]

None of these asserted problems are, however, presented on this record. In the instant case, the facts demonstrate that:

- (i) The Clerk of the Court refused to accept rent into the court registry without an order of the sitting judge (*see*, Rule 1.100, Fla. R. Civ. Pro.; *compare*, Rule 1.160, Fla. R. Civ. Pro.);
- (ii) Defendants received notice of and the order appealed was rendered at a hearing in which Defendants' arguments were presented by their counsel, and at which Defendants agreed and prevailed in arguments as to "Base Rent" disbursement which arguments were unrelated to either need or hardship; and
- (iii) Defendants never requested a "post-seizure" hearing and no funds were ever placed in the court registry.

Because this case does not fairly raise the issues sought to be litigated by Defendants, review by the court of those issues based on this record is premature.

C. The Case Is Moot.

When petitioners "who challenge the 'governmental action or policy' in question no longer have any present interest affected by that policy", their petition is moot.

Weinstein v. Bradford, 423 U.S. 147, 96 S. Ct. 347, 46 L.Ed 2d 3501 (1975). This petition is, therefore, moot.

Petitioner challenges the August 8, 1988 order of the trial court which required that the court registry accept funds comprising certain rentals under long term leases of condominium recreational facilities from Respondents and to retain these rentals pending further court action. However, no rents were ever placed in the court registry because the parties reached a voluntary agreement. This agreement established a rent escrow account and provided agreed procedures for disbursement. Defendants were not, therefore, deprived of any property interest by the appealed court order. Rather, that deprivation, if any, was by agreement of the parties. The issue of whether the August 9, 1988 order was issued pursuant to appropriate procedure was rendered moot by the parties' subsequent consensual actions. Petitioners have no present right affected by the order which is the subject of this appeal, and this petition is therefore moot.

CONCLUSION

For the reasons discussed herein, this Court should decline to exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

LOUISE E. TUDZAROV
Counsel of Record

PETER S. SACHS

LOUIS S. SROKA

SACHS, SAX & TUDZAROV, P.A.

Post Office Box #810037

Boca Raton, Florida 33481-0037

(407) 994-4499

Counsel for Respondents

APPENDIX



IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CONDOMINIUM OWNERS
ORGANIZATION OF CENTURY
VILLAGE EAST, INC., a Florida
not-for-profit corporation, et als.,

CASE NO.:
88-10484 GY

Plaintiffs,

vs.

CENVILL INVESTORS, INC., a
Florida corporation, et als.,

Defendants.

_____/

The above-entitled case came on for hearing before the Honorable George A. Shahood, Judge of the above-styled court, on Tuesday, July 26, 1988, at the Broward County Courthouse, Ft. Lauderdale, Florida, commencing at 10:00 a.m.

APPEARANCES:

LOUIS S. SROKA, ESQ.
PETER S. SACHS, ESQ.
Sachs and Sax, P.A.
On behalf of Plaintiffs

GLENN N. SMITH and STEPHEN VERBIT,
ESQS.
Ruden, Barnett, McClosky,
Smith, Schuster & Russell, P.A.
On behalf of Defendants

...

[Excerpted from page 12 of the Transcript.]

. . .

11 MR. SMITH: The evidence we are trying to
12 present to you is on the issue of the standing of
13 COOCVE to be here and invoke the statute. I am not
14 trying to get to the ultimate issues in this case.
15 Let me find the section.

16 This is the deposition of Mr. Brass, who
17 is the vice-chairman of the recreation committee.
18 Under the leases and amendment of the leases we are
19 traveling under on this complaint a recreation
20 committee was set up to oversee or be the policy
21 maker on the operation of these facilities. Mr.
22 Brass is the vice-chairman of the recreation
23 committee, and is on the advisory committee, which
24 is a team of retired lawyers that advises them, the
25 association.

[Excerpted from page 13 of the Transcript.]

1 Here is a copy of the original.

2 THE COURT: Are you going to file it?

3 MR. SMITH: Yes, sir. We will file it.

4 THE COURT: I will give it to the clerk

5 for filing. I will use it now. Go ahead. . . .

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CASE NO.: 88-10484 CY

CONDOMINIUM OWNERS	:
ORGANIZATION OF CENTURY	:
VILLAGE EAST, INC.,	:
Plaintiffs,	:
v.	:
CENVILL INVESTORS, INC.,	:
etc., et al.,	:
Defendants.	:

ORDER

THIS CAUSE having come on to be heard on Defendants' Motion to Continue Hearing, and the Court having heard argument of counsel and otherwise being fully advised in the premises, it is hereby

CONSIDERED, ORDERED AND ADJUDGED:

Granted: Plaintiffs' Motion for Entry of Order Allowing Deposit of Funds rescheduled on Court's Non-Jury Calendar for June 1, 1988 at 9:30 a.m. This Order is without prejudice to any rights or obligations of Plaintiffs under F.S. 718.401.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, this 23 day of May, 1988.

s/GEORGE A. SHAHOOD
CIRCUIT COURT JUDGE

Copies Furnished:
Counsel of Record

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CONDOMINIUM OWNERS
ORGANIZATION OF CENTURY
VILLAGE EAST, INC., a Florida
not-for-profit corporation, ASHBY
"A" CONDOMINIUM
ASSOCIATION, INC., a Florida
not-for-profit corporation, and
AMADEO TRINCHITELLA,

CASE NO.:
88-10484 CY

Plaintiff,

v.

CENVILL INVESTORS, INC., a
Florida corporation f/k/a
CENTURY VILLAGE EAST,
INC.; COMMUNICATIONS &
CABLE, INC., a Florida
corporation; C.V.R.F. DEERFIELD
LIMITED, a Florida limited
partnership by and through its
General Partner, HOLROD
REALTY HOLDING CO., a New
York corporation; and D.R.F.,
INC., a Delaware corporation,

Defendants.

**ORDER ON PLAINTIFFS' MOTION TO DEPOSIT
RENTS INTO THE COURT REGISTRY**

This cause, having come on to be heard upon the
Plaintiffs' Motion to Deposit Rents into the Court Regis-
try, and the Court, having heard argument of counsel,
and being fully advised in the premises, hereby

CONSIDERS AND ORDERS that:

1. Plaintiffs' Motion to Deposit Rents into the Court Registry is hereby granted.

2. Effective September 1, 1988, all accrued rent due under the Long-Term Leases at Century Village, Deerfield Beach, shall be deposited into the Court Registry and a like amount shall be deposited each and every month thereafter until further Order of Court.

3. The Clerk of the Court is hereby directed to accept the funds specified above into the Court Registry.

4. Defendants are entitled to receive from the Court Registry, the proportionate amount of all rent collected that is Base Rent. To accomplish this, the Court Registry shall deduct the amount of \$20.57 from each unit owner's payment. The amount so deducted is Operational Rent, which shall remain in the Court Registry pending further Order regarding same. The remainder of each unit owner's payment, following the deduction, is Base Rent, which Base Rent shall be disbursed to Defendants on the first and fifteenth of every month, commencing September 15, 1988.

5. If the parties are able to stipulate to the establishment of an account, with a depository in lieu of the Court Registry, then such stipulation shall be proffered to the Court.

DONE AND ORDERED in Chambers this 9 day of
August, 1988.

GEORGE A. SHAHOOD
GEORGE A. SHAHOOD,
Circuit Court Judge

Copies furnished to:

Glenn N. Smith, Esq., 110 East Broward Boulevard, P.O.
Box 1900, Penthouse D, Fort Lauderdale, Florida 33302

Louis S. Sroka, Esq., 1499 West Palmetto Park Road, Boca
Raton, Florida 33486

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CASE NO.: 88-10484 CY

CONDOMINIUM OWNERS :
ORGANIZATION OF CENTURY :
VILLAGE EAST, INC., :

Plaintiffs, :

vs. :

CENVILL INVESTORS, :
INC., et al., :

Defendants. :

**ORDER ON DEFENDANTS' MOTION FOR
RECONSIDERATION OF ORDER GRANTING
PLAINTIFFS' MOTION TO DEPOSIT RENTS INTO
THE COURT REGISTRY**

THIS CAUSE, having come before the Court on August 26, 1988, at 10:30 A.M., upon the aforesaid Defendants' Motion for Reconsideration and the Court having heard argument of counsel and being fully advised in the premises, it is

CONSIDERED, ORDERED AND ADJUDGED:

1. That this Court's Order of August 9, 1988 entitled Order Granting Plaintiffs' Motion to Deposit Rents Into The Court Registry, be and the same hereby is amended only insofar as paragraph 2 thereof shall be amended to read "effective October 1, 1988" in place of "effective September 1, 1988".

2. That the Court hereby defers ruling on the remainder of said Motion for Reconsideration.

3. That the Court will enter a final ruling on said Motion for Reconsideration on or before September 12, 1988.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 31 day of August, 1988.

s/GEORGE A. SHAHOOD
CIRCUIT COURT JUDGE

Copies Furnished:

Glenn N. Smith, Esq.
Louis S. Sroka, Esq.

IN THE CIRCUIT COURT
OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN
AND FOR BROWARD
COUNTY, FLORIDA

CONDOMINIUM OWNERS
ORGANIZATION OF CENTURY
VILLAGE EAST, INC., a Florida
not-for-profit corporation, ASHBY
"A" CONDOMINIUM
ASSOCIATION, INC., a Florida
not-for-profit corporation, and
AMADEO TRINCHITELLA,

CASE NO.:
88-10484 GY

Plaintiffs,

v.

CENVILL INVESTORS, INC., a
Florida corporation f/k/a
CENTURY VILLAGE EAST,
INC.; COMMUNICATIONS &
CABLE, INC., a Florida corporation;
C.V.R.F. DEERFIELD LIMITED,
a Florida limited partnership
by and through its General Partner,
HOLROD REALTY HOLDING CO.,
a New York corporation; and D.R.F.,
INC., a Delaware corporation,

Defendants.

JOINT STIPULATION REGARDING DEPOSITORY IN
LIEU OF COURT REGISTRY

In accordance with paragraph 5 of the Court's "Order on Plaintiff's Motion to Deposit Rents into the Court Registry", dated August 9, 1988, the parties hereby stipulate to the establishment of an account with a bank

depository in lieu of the Court Registry pursuant to the following terms:

1. An interest-bearing account shall be established in a mutually acceptable bank, which account shall be entitled the Century Village East Recreation Escrow Account ("Recreation Escrow Account"). The bank agreed upon shall act as Escrow Agent and as an officer of the Court and shall take directions regarding disbursements exclusively upon order of the Court. The parties hereto have no power or authority to direct any action by the bank.

2. The payment procedure utilized by all lessees prior to the initiation of this litigation shall continue to be utilized. Specifically, Defendants shall continue to receive rent checks and perform the normal accounting function with regard to them. By way of example, they shall tabulate delinquent payments, insufficient payments, arrange foreign currency exchanges, and the like.

3. Defendants shall then separate the amount of Base Rent received from Operational Rent (currently at the rate of \$20.57 per month per condominium unit) received, and disburse the amount of Base Rent directly to Defendants. Simultaneously therewith, Defendants shall deposit all Operational Rent, including prepaid rent into the Recreation Escrow Account on the 5th, 10th, and 20th day of each month, commencing November 5, 1988.

4. Defendants shall also deposit into the Recreation Escrow Account on the 5th, 10th, and 20th day of each month, commencing November 5, 1988, any and all other incomes derived from the operation of every aspect of the Century Village East recreational facilities including, but

not limited to, ticket sales, vending machines revenues, theater income, concessions, etc. Said funds are hereinafter referred to as "Other Income".

5. Defendants shall also deposit into the Recreation Escrow Account on November 5, 1988, any and all Operational Rent and Other Income held by them and interest thereon; including, without limitation, all funds located in First American Bank, totalling approximately \$414,293.00 (balance as of October 10, 1988).

6. Defendants shall prepare and provide to Plaintiffs, simultaneously with each deposit into the Recreation Escrow Account a statement of the amount of deposit, and on a monthly basis, by the tenth of the following month, shall provide a detailed and itemized accounting demonstrating the amount of all rent received and any delinquencies; the amount of all Other Income received; the segregation and disbursement of Base Rent; and the amount of deposits into the Recreation Escrow Account.

7. All interest incurred in the Recreation Escrow Account, and all funds deposited into the Recreation Escrow Account, shall be utilized solely for operation of the Recreational Facilities.

8. Disbursements shall be made from the Recreational Account exclusively upon Court Order. Court Orders regarding disbursement shall issue either upon submission to the Court of a Joint Stipulation of the parties providing for agreed disbursements, or after due notice, and opportunity to be heard.

9. This Joint Stipulation is entered into without prejudice to any of the party's rights, claims, or positions in this lawsuit or otherwise, either in the Circuit or Appellate Court, and specifically without prejudice to the parties' rights, claims, positions and challenges to the propriety of the Order on Motion to Compel Arbitration and Order Allowing Deposit of Funds into the Registry of the Court.

s/GLENN N. SMITH
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 McCLOSKEY, SMITH,
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s/LOUIS S. SROKA/PSS
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 Road
 Suite 402-Interstate Plaza
 Boca Raton, Florida 33486
 Florida Bar Number:
 360554

AGREED ORDER

THIS CAUSE having come on to be heard upon the Joint Stipulation Regarding Depository in Lieu of the Court Registry, and the Court having reviewed said Joint Stipulation and being fully advised in the premises, hereby

CONSIDERS AND ORDERS that

1. The Joint Stipulation of the parties is hereby adopted.

2. The procedures outlined in said Joint Stipulation shall be adhered to by the parties in lieu of deposits into the Court Registry as previously ordered by this Court on August 9, 1988.

DONE AND ORDERED in Chambers this 9 day of November, 1988.

s/GEORGE A. SHAHOOD
Circuit Court Judge

Copies furnished:

Glenn N. Smith, Esq., 110 East Broward Boulevard, P.O. Box 1900, Penthouse D, Fort Lauderdale, Florida 33302

Louis S. Sroka, Esq., Suite 402 Interstate Plaza, 1499 West Palmetto Park Road, Boca Raton, Florida 33486

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CONDOMINIUM OWNERS)	
ORGANIZATION OF CENTURY)	
VILLAGE EAST, INC., a Florida)	
not-for-profit corporation, ASHBY)	
"A" CONDOMINIUM)	
ASSOCIATION, INC., a Florida)	CASE NO.:
not-for-profit corporation, and)	88-10484 GY
AMADEO TRINCHITELLA,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CENVILL INVESTORS, INC., a)	
Florida corporation f/k/a)	
CENTURY VILLAGE EAST, INC.;)	
COMMUNICATIONS & CABLE,)	
INC., a Florida corporation;)	
C.V.R.F. DEERFIELD LIMITED, a)	
Florida limited partnership by and)	
through its General Partner,)	
HOLROD REALTY HOLDING CO.,)	
a New York corporation; and)	
D.R.F., INC., a Delaware)	
corporation,)	
)	
Defendants.)	
)	

**JOINT STIPULATION REGARDING DISBURSEMENT
FROM THE RECREATION ESCROW ACCOUNT**

All parties hereto hereby stipulate to procedures to be utilized for disbursement from the Recreation Escrow Account and state:

1. The parties have previously stipulated to the establishment of an interest bearing account to be entitled

Century Village East Recreation Escrow (Recreation Escrow Account). All references in this Stipulation to the Recreation Escrow Account refer to that same account.

2. At 1:00 p.m. on Monday afternoon of each and every week, representatives of the Recreation Committee and of the Defendants shall meet at the offices of Sondra Siegal to review proposed disbursements from the Recreation Escrow Account. The parties may, by agreement, provide for a different time for the Monday meeting and they may also agree to other meetings, if necessary.

3. At the Monday meeting and any other meetings agreed to by the parties for the purpose of approving disbursements, Defendants shall provide to the representatives of the Recreation Committee a list of all proposed disbursements from the Recreation Escrow Account. For each proposed disbursement, Defendants shall provide all back-up information including, but not limited to, bills, invoices, and a brief explanation.

4. The Recreation Committee shall have seventy-two (72) hours from the time of the meeting (exclusive of religious and legal holidays) to approve or disapprove each proposed disbursement. During the 72 hour period, knowledgeable representatives of Defendants shall be available to answer questions regarding the disbursements; and requests of the Recreation Committee for further oral or documentary information regarding any disbursements shall be complied with by Defendants immediately. The Recreation Committee shall respond within 72 hours (exclusive of religious and legal holidays) approving or disapproving each disbursement, in writing, and its response shall be deemed given, when said

writing is delivered, to the office of Sondra Siegal. If the Recreation Committee fails to respond within 72 hours by signifying approval or disapproval of disbursements, then the disbursements shall be deemed approved.

5. For all disbursements approved by the Recreation Committee, a Joint Stipulation and Agreed Order shall be submitted to the Court stating that said enumerated disbursements are approved and agreed to, and directing the Escrow Agent to disburse the approved amount of funds in the manner hereinafter set forth.

6. If the Recreation Committee disapproves of any proposed disbursements then funds shall not be released from the Recreation Escrow Account to pay for said disapproved disbursements. Disputes as to disbursements shall be resolved as follows:

Sidney Konigsburg shall be appointed Special Master for the purpose of resolving disputes as to disbursements from the Recreation Escrow Account. The parties shall arrange periodic hearings before the Special Master for resolution of disputed disbursements. The Special Master shall hear evidence and arguments concerning disputed disbursements and shall submit a recommended order to this Court. Objections to any recommended order may be filed by any party within seven (7) days after receipt of said recommended order. The Court will then conduct hearings as to any objections regarding whether or not to accept the recommended order.

7. The Escrow Agent shall make disbursements solely as directed by order of the Court. All disbursements by the Escrow Agent shall be made by wire transfer, or similar procedure to the operational account

maintained by Defendants at First American Bank, Deerfield Beach, Account No. 0910205462. Defendants shall then utilize said funds only to make the disbursements approved by order of this Court. All disbursements made from the Recreation Escrow Account, whether agreed to by the parties or determined by the Special Master and Court, are without prejudice to the rights and positions of the parties hereto throughout this litigation, and otherwise.

8. This stipulation is entered into without prejudice to any parties' rights, claims, or positions in this lawsuit or otherwise, in the trial or appellate Court, and specifically without prejudice to the parties' rights, claims, positions and challenges to the propriety of the Order on Motion to Compel Arbitration and Order Allowing Deposit of Funds into the Registry of the Court.

s/GLENN N. SMITH
 GLENN N. SMITH
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 736-7772
 (305) 428-3077

AGREED ORDER

THIS CAUSE having come on to be heard upon the Joint Stipulation Regarding Disbursement from the Recreation Escrow Account, and the Court having reviewed said Joint Stipulation and being fully advised in the premises, hereby

CONSIDERS AND ORDERS that

1. The Joint Stipulation of the parties is hereby adopted.

2. The procedures outlined in said Joint Stipulation shall be adhered to by the parties.

DONE AND ORDERED in Chambers this 9 day of November, 1988.

s/GEORGE A. SHAHOOD
Circuit Court Judge

Copies furnished:

Glenn N. Smith, Esq., 110 East Broward Boulevard, Penthouse D, Fort Lauderdale, Florida 33302

Louis S. Sroka, Esq., Suite 402 Interstate Plaza, 1499 West Palmetto Park Road, Boca Raton, Florida 33486

AMENDMENT TO THE LONG TERM LEASE*

The following is excerpted from pages 9, 10 and 11 of Exhibit B to the Complaint:

[Page 9]

...

D. Paragraph 6.14 shall be inserted in the Lease as follows:

"6.14 There shall be formed a Recreation Committee composed of seven (7) members, each of whom shall serve for a period of two (2) years with the term of service beginning on January 1st of the year after the election; provided, however, that on January 1, 1981 three (3) people shall serve for a period of two (2) years, and four (4) people shall serve for a period of one (1) year. Initial members of the Recreation Committee shall be appointed by Condominium Owners Organization of Century Village East, Inc. (COOCVE) (or such other organization irrevocably designated by COOCVE in writing, copies to Lessor, to perform such function as its successor for such purpose).

[Page 10]

The Committee shall have input into all matters affecting the operation and maintenance of the Demised Premises.

...

During the period of time in which the Lessor shall, in accordance with Paragraph 5.3 of this instrument, have limited its right to collect increases in Operational Rent, the recommendations and input of the Recreation Committee shall be advisory in nature only, except to the

extent that if the Recreation Committee requests the use of a room or other facility on the Demised Premises. . . . In all other respects the Lessor shall, wherever reasonable, attempt to implement the recommendations of the Recreation Committee where such recommendations do not either increase the cost of operation and maintenance of the Demised Premises, or cause, in Lessor's sole opinion, a material adverse effect on the Lessor's interest. In the event of a disagreement between the Lessor and the Recreation Committee during the "limited maximum" period set forth in Paragraph 5, the

[Page 11]

decision of the Lessor will prevail. . . .

Commencing on January 1, 1985, in the event of a disagreement between the Lessor and the Recreation Committee, the decision of the Recreation Committee shall prevail; provided, however, that the same shall have no material adverse effect on the Lessor's interest.

In the event that Lessor implements a decision of the Recreation Committee with which it disagrees, such implementation shall be subject to the following:

(a) The Lessor being fully indemnified and held harmless by all the Lessee Associations and all Individual Lessees against all costs and liability on account of such policy concerning the operation and maintenance of the Demised Premises. This indemnification shall be deemed hereby irrevocably given.

(b) The decision concerning the operation of the Demised Premises shall be legal and no act shall be suffered so as to cause the Lessor to be in default of its obligations to any Lessee.

(c) The Demised Premises and all furniture, furnishings, fixtures, equipment, appliances and goods bought or hereinafter placed on the Demised Premises shall, at all times, be kept in a good state of repair and first class condition. The Recreation Committee, in the event of such implementation shall neither permit or suffer any strip, waste or neglect of any of the same and will repair, renovate and replace such real property and goods as often as necessary to keep the same in good repair and condition.

In no event, however, shall the Lessor be responsible for the actions of the Recreation Committee. . . .

* Recorded June 17, 1981, at Official Records Book 9642, Page 1, et seq., Public Records of Broward County, Florida

